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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: : PATENT
:
Hartmut SCHÜRG et al. :
: Art Unit: 3636
Serial No.: 10/587,218 :
: Examiner: E. P. Garrett
Filed: July 25, 2006 :
:
For: AIRCRAFT PASSENGER SEAT : Appeal No. _____

APPELLANTS' REPLY BRIEF
ON APPEAL UNDER 37 C.F.R. § 41.41

COMMISSIONER FOR PATENTS
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Alexandria, VA 22313-1450

Sir:

For the appeal to the Board of Patent Appeals and Interferences from the decisions dated March 17, 2010 and June 7, 2010 of the Primary Examiner twice and finally rejecting claims 9-41 in connection with the above-identified application, Applicants-Appellants submit the following brief in accordance with 37 C.F.R. §41.41 and in response to the December 16, 2010 Examiner's Answer.

Rejection of Claim 9 by Meritt Patent

The last paragraph on page 10 of the Examiner's Answer mischaracterizes the structure and operation of the Meritt self-contained case. The flap 8, alleged to constitute a tray table, cannot be placed on the occupant's knees to use as a table upon release of elastic strap 9 and the metal quick-

release fasteners 10. As illustrated in Fig. 1, flap 8 is in its fully open position since the mesh side panels 6 prevent it from pivoting in a direction further away from the case 1. The elastic strap 9 engages a hook on front cover 8. By the elasticity of strap 9, front cover 8 is maintained in its fully open position (shown in Fig. 1) and is restrained against further pivoting to a further open position by the mesh side panels 6. Release of strap 9 from the hook will not allow front cover 8 to be pivoted in a direction towards a horizontal position beyond the position shown in Fig. 1, but will only allow it to pivot to a closed position within case 1 as shown in Fig. 7.

Since the Meritt elastic strap 9 is elastic, and thus flexible, if the Meritt front cover could pivot downwardly further from the position illustrated in Figs. 1 and 5, it could not maintain that illustrated position but would be pulled downwardly to an extent until the elastic strap reaches its unstretched condition.

This structure is further indicated by the fasteners 10 being connected to zipper handles 11. Such zippers are to be part of the zippers that extend along the height of the front panel 8 to secure it in a closed position when the zipper handles are slid upwardly as viewed in Fig. 1.

The positions of the zipper handles 11 in the closed position of the principle case 1 are not shown in Fig. 7. Nevertheless, one of ordinary skill in the art would recognize that to transfer the principle case 1 from the open position of Fig. 1 to the closed position of Fig. 7, the zipper handles have to be moved all the way from their lowest positions of Fig. 1 to the top of the principle case to be able to be fully closed.

In the folded position of the front cover 8 in Fig. 1, a bent portion of the front cover can be seen, indicating that the front cover is flexible. That is the only hint regarding the material properties of the front cover 8 in the Meritt patent. There is no indication whatsoever that any part

of the front cover 8 is formed from any rigid material to enable the front cover to take up any load applied in a direction that is perpendicular to its surface.

One of ordinary skill in the art would interpret Meritt front cover 8 as being of a flexible material to easily compensate for dimensional tolerances, given that the zipper is attached all around a rim of the front cover 8. In fact, it would be much more difficult to attach the zipper to the rim of the front cover 8 if it were made from any rigid material.

Moreover, the alleged main opening (the bottom portion of open space 1) of the receptacle, being a cavity, for introducing objects into the cavity, is said to be open and exposed when the alleged tray table (front cover 8) is in the stored position (p. 4, first paragraph). As illustrated in Fig. 7, the alleged main opening is not “open and exposed” when the front cover 8 is in the closed position with the zippers fully closed.

Further, when the Meritt case is mounted on a seat as illustrated in Fig. 5, the pivot axis for the front cover is substantially below the seat. Even if the front cover could be pivoted downwardly towards a horizontal position, it would be located well below the knees of an occupant seated in seats located behind the illustrated seats in Fig. 5. As such, the front cover would not be capable of or considered a tray table as claimed.

Contrary to the allegations contained in the first paragraph on p. 11 of the Examiner’s Answer, front cover 8 is mounted on case 1. It is not coupled to the support structure of a backrest. Rather, the case is merely mounted over the outside of the seat by straps as illustrated in Fig. 5. The Examiner’s Answer fails to demonstrate that the Meritt front cover 8 is coupled to the support structure of the backrest of a seat as recited in claim 9.

The remaining arguments proposed in the Examiner’s Answer relative to the Meritt patent are adequately addressed in the Brief on Appeal.

For the reasons stated above and in the Brief on Appeal, claim 9 is not anticipated by the Meritt patent.

Rejection of Claim 9 by Rogers Patent

In the paragraph spanning pages 11 and 12 of the Examiner's Answer, the Rogers "table" (now interpreted as the upholstered lid 34) is alleged to be mounted on the back of the seat support structure rather than on the front of the seat support structure as illustrated in Figs. 1, 2 and 4 of the Rogers patent. Additionally, the Rogers upholstered surface 36 is alleged to form a backrest. However, the upholstered surface 36 is merely the front surface of the backrest which is horizontal when in the use position of the upholstered lid 34. As such, it is not mounted on the back of the backrest support structure as claimed.

In a use position of the sofa, the upholstered surface 36 is part of the back surface 22 shown in Fig. 1. While sitting in the mid position of the sofa, an occupant's back is supported by a support structure formed by the backrest side panels 24, 24a as shown on the far left side of Figs. 4 and 5. In particular from Fig. 5 it becomes clear that the seat occupant's back would not be supported and the seat occupant would not be able to rest his/her back on the back surface 22 if the backrest side panels 24, 24a were removed. From that, Fig. 3 clearly shows that the alleged tray table 34 is coupled via hinges 35, rear edge 28, mounting brackets 47, pivot links 43, 45 and mounting links 41 to a front of the backrest support structure and not to the back, as required by claim 9.

The first full paragraph on page 12 of the Examiner's Answer alleges that Fig. 2 of the Rogers patent shows the main opening accessible when the tray table is in the stored position. However, Fig. 2 only illustrates the upholstered lid 34 alleged to constitute the tray table in its

use position and not in its stored position as alleged. In its stored position, as illustrated in Fig. 5, only the surface 36 is exposed, while all the remaining structure is hidden behind that surface. Figure 3 also only shows the Rogers structure in its use position and not in a stored position. Thus, Figs. 2 and 3 of the Rogers patent cannot show the claimed limitations relative to the arrangement in the stored position as alleged in the Examiner's Answer.

Relative to the statement of the rejection in view of the Rogers patent on p. 4 of the Examiner's Answer, the upholstered lid 34 for the first time is alleged to correspond to the claimed tray table that is coupled by hinges 35 to sofa table frame 37 at its rear edge 28. That attachment is not to the back of the seat back structure as claimed. Similarly, the recessed compartment 32 and the container portion 29 of the Rogers structure are not in the back of the seat support, as recited in claim 9.

The inside portion of the alleged Rogers tray table 34 is shown in Fig. 3 with container portion 29 (col. 3, lines 13-15). The alleged pocket receptacle being a cavity is identified by the Examiner as the space in element 32 which is an open space adjacent to the alleged pocket receptacle. Further, the main opening of the pocket receptacle is said to be the space 29 cited before as the inside portion of the alleged tray table 34. This argument in support of the rejection is lacking consistency, and thus is untenable.

For the reasons stated above and in the Brief on Appeal, claim 9 is not anticipated by the Rogers patent.

Rejection Over Canni Patent in View of Buxton Patent

In the paragraph spanning pages 13 and 14 of the Examiner's Answer, the Buxton patent is alleged to demonstrate prior knowledge of placing tray tables on the back side of seats and that

the placement of a Buxton table on the back of the Canni seat would inherently result in the tray table overlapping the pocket due to the depth of the Canni pocket. However, the Buxton patent only shows a tray table 54 or 72 vertically spaced relative to and below a storage compartment formed by liner 57 in Fig. 1 or locker 63 in Fig. 2. This vertical spacing does not provide any overlap between the tray table and the storage compartment or locker, and provides a design that specifically avoids any of the claimed overlap. In view of the teaching of the Buxton patent, any use of the Buxton tray table on the Canni seat would similarly be arranged so as to provide the vertical spacing and avoidance of any overlap between the tray table and the pocket as disclosed in the Buxton patent. In this manner, any obvious combination of the Canni and Buxton patents teaches away from the claimed invention. No teaching or reason is provided to modify the Buxton and Canni patents' teachings in a manner that would produce the claimed invention, particularly as to the claimed overlap without the hindsight of applicants' disclosure.

The first full paragraph on page 14 of the Examiner's Answer states that the proposed "combination merely requires adding the tray table of Buxton to the seat of Canni." As noted above, using the tray table as taught in the Buxton patent would not provide the claimed structural relationship between the cavity and the tray table as recited in claims 9 and 10.

The remaining issues relative to the proposed combination of the Canni and Buxton patents are adequately addressed in the previously filed Brief on Appeal and are not repeated herein.

Conclusion

In view of the foregoing and the previously filed Brief on Appeal, Applicants-Appellants submit that the rejections of the claims are untenable and request that they be reversed.

Respectfully submitted,



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